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10/774,161

02/06/2004

D. Ryan Breese

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EXAMINER

VARGOT, MATHIEU D

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* D. RYAN BREESE

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Appeal 2010-009758  
Application 10/774,161  
Technology Center 1700

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Before BRADLEY R. GARRIS, BEVERLY A. FRANKLIN, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134, Appellant appeals from the Examiner's rejection under 35 U.S.C. § 103(a) of claims 1, 2, 4-9, 14, and 15 as unpatentable over Underwood (US 3,179,326 issued April 20, 1965) or Duckwall (US 6,391,411 B1 issued May 21, 2002). We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellant claims a method comprising "orienting in the machine direction (MD) a polyethylene blown film to a draw-down ratio greater than 10:1 to produce an MD oriented film having a 1% secant MD modulus of 1,000,000 psi or greater" (claim 1). The draw-down ratio may be 11:1 or greater (claim 14).

Representative claims 1 and 14 read as follows:

1. A method comprising orienting in the machine direction (MD) a polyethylene blown film to a draw-down ratio greater than 10:1 to produce an MD oriented film having a 1% secant MD modulus of 1,000,000 psi or greater; wherein the blown film is made from a polyethylene resin which has a density within the range of 0.950 to 0.970 g/cc and a number-average molecular weight  $M_n$  within the range of 11,000 to 20,000.

14. The method of claim 1 wherein the draw-down ratio is 11:1 or greater.

Appellant's arguments in this appeal are directed to limitations in claims 1 and 14 only (Br. 3-6). Accordingly, the remaining claims under rejection will stand or fall with claims 1 and 14.

We sustain the above rejections for the reasons expressed in the Answer. The following comments are added for emphasis.

The Examiner finds: that "the draw ratio of Underwood . . . is such that the film is [preferably] stretched . . . 'at least 900% or greater' (col. 4, lines 53-54)" (Ans. 4); that greater than 900% stretch would correspond to, and would have

suggested, draw-down ratios greater than 10:1 (claim 1) such as 11:1 (claim 14) as evidenced by Example 1 of Underwood (*id.*); and that so-stretched film would inherently possess a 1% secant MD modulus of 1,000,000 psi or greater as required by claim 1 (*id.*).

Appellant states that "Underwood . . . does not teach that the film should be or it is preferred to be stretched greater than 900%" (Br. 4) and argues that "[t]herefore, to a person of ordinary skill in the art, Underwood . . . teaches away from Appellant's invention [as defined by claims 1 and 14]" (*id.*).

Appellant's statement is incorrect as indicated above and as expressly determined by the Examiner in the Answer (Ans. para. bridging 6-7). Significantly, Appellant has filed no Reply Brief and accordingly has failed to identify error in the Examiner's finding concerning Underwood's teaching that "it is preferred to stretch the film at least 900% . . . or greater" (col. 4, ll. 52-54). As a consequence, the record contains no support for Appellant's argument that Underwood teaches away from the process defined by claims 1 and 14.

The Examiner finds that Duckwall discloses draw-down ratios up to about 10 which would include, or would have suggested, ratios greater than 10:1 (claim 1) such as 11:1 (claim 14) and that so-stretched film would inherently possess the modulus values required by claim 1 (Ans. 5).

Appellant expressly acknowledges the Examiner's above finding regarding Duckwall (Br. para. bridging 5-6). However, Appellant fails to identify with any reasonable specificity error in this finding or error in the Examiner's resulting obviousness conclusion (*id.*).

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136.

Appeal 2010-009758  
Application 10/774,161

ORDER  
AFFIRMED

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